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8 Attorneys for Vistoso Partners. L.L.C.

9 IN THE UNITED STATES BANKRUPTCY COURT
10 FOR THE DISTRICT OF ARIZONA

11	In re)	Chapter 11 Proceeding
12	BAPTIST FOUNDATION OF ARIZONA, INC.,)	NO. 99-13275-ECF-GBN through 99-
13	an Arizona nonprofit 501(c)(3) corporation, and)	13364-ECF-GBN
14	related proceedings,)	All Cases Jointly Administered Under
15)	Case No. 99-13275-ECF-GBN
16	Debtor.)	MOTION TO COMPEL DEBTORS'
17)	COMPLIANCE WITH ORDER

17 Vistoso Partners, L.L.C., a party to a contract with the Debtor, Baptist Foundation of Arizona, Inc.,
18 seeks an order compelling the Debtors' jointly administered estates to comply with this Court's previous Order
19 of April 19, 2000. This Court's prior Order directed the Debtors to correct the default under the Vistoso
20 Partners agreement "by immediately satisfying the outstanding balance owed to" the non-Debtor party.

21 Despite Vistoso's attempts to resolve this without involving the Court, the Debtors have not made the
22 payments required by this Court's Order. This Motion is brought pursuant to 11 U.S.C. § 105(a) and §
23 365(b), and Rule 9021 of the Rules of Bankruptcy Procedure. This Motion is supported by the Memorandum
24 of Points and Authorities attached hereto and incorporated hereat.

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MEMORANDUM OF POINTS AND AUTHORITIES

1. The Debtor filed Chapter 11 petitions under Title 11 of the United States Code on November 9, 1999.

2. On March 8, 2000, the Debtors filed their *Omnibus Motion for an Order to Assume Various Executory Contracts*. Included among the contracts proposed to be assumed was the October 28, 1997 contract with Vistoso Partners, L.L.C. The *Motion* provided, in relevant part, as follows:

“TFCI and Vistoso Partners, L.L.C. entered into an Agreement on October 28, 1997, to share certain costs with respect to the installation of the street and utility improvements in Woodshare Road. Vistoso Partners is the master developer for the planned community of which the Rancho Vistoso Project is a part thereof. Pursuant to the Agreement, TFCI accepted a 50% share in the costs associated with the installation of the street improvements, which includes a linear park. Beyond the requirements of the Agreement, the completion of the improvements is necessary to meet the requirements dictated by the performance bonds held by the Town of Oro Valley.⁸

⁸ A true and correct copy of the September 6, 1999 Agreement is attached as Exhibit H. To assume this agreement the Companies will be required to cure the default by paying down the current outstanding balance of \$170,350.85.”

The *Omnibus Motion* provided in its prayer for relief as follows:

“WHEREFORE, the Companies respectfully request that this court enter an order approving the Companies’ assumption of the Agreements, and the authority to cure each default by immediately bringing each account current, and for such further relief as the court deems just and proper.”

3. On April 19, 2000, this Court entered its *Order Approving Debtors’ Assumption of Various Executory Agreements*. In relevant part, the *Order* provided as follows:

“... 2. The Companies are directed to cure each default under each Agreement by immediately satisfying the outstanding balance owed to each contractor, and authorized to do such other acts and execute such other documents as are necessary and appropriate to effect such cure.”

4. On or about April 17, 2000, the Debtors filed and served a *Notice of Order Approving Debtors’ Assumption of Various Exeuctory Contracts*.

5. On June 19, 2000, counsel undersigned, as attorney for Vistoso Partners, L.L.C., wrote to counsel for the Debtors demanding payment. A copy of said letter is attached as Exhibit A.

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1 6. The Debtors have enjoyed the benefit of their executory contract with Vistoso Partners, but
2 despite demand, have failed to pay. Vistoso Partners has attempted to resolve this without the involvement of
3 the Court. Such attempts have failed.

4 WHEREFORE, Vistoso Partners, L.L.C. seeks an order requiring that the Debtors immediately
5 conform with the requirements of this Court's Order dated April 19, 2000, and pay all sums due under the
6 executory contract with Vistoso Partners, and perform all other obligations required of the Debtors relative
7 to said contract. Vistoso Partners requests an award of attorney's fees in the bringing of this motion pursuant
8 to 11 U.S.C. § 365(b)(1)(B).

9 DATED: November 8, 2000.

MESCH, CLARK & ROTHSCHILD, P.C.

By s/Michael McGrath #6019
Michael McGrath
Attorneys for Vistoso Partners, L.L.C.

14 Copy mailed November 9, 2000, to:

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